

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4706 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

CHHAGANLAL U PATEL

Versus

DISTRICT PANCHAYAT

Appearance:

MR PV HATHI for Petitioner

M/S PURNANAND & CO for Respondent No. 1

MR D.C. DAVE with MR V.M. PANCHOLI for Respondent No. 2

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 02/11/1999

ORAL JUDGEMENT

The petitioner, a former Talati-cum-Mantri, challenges the order of the Gujarat Services Tribunal, Gandhinagar, passed on 27th April, 1987, dismissing his appeal and confirming the order of the District Development Officer, dated 15th December, 1986, by which

the petitioner's dismissal from service made by the Deputy DDO on 20th March, 1985, was upheld.

2. The petitioner was prosecuted for the offence of criminal breach of trust, punishable under Section 409 of the Indian Penal Code, in Criminal Case No. 1551/83 before the Court of Judicial Magistrate First Class at Valsad. There was also a charge alleged against him under Section 466 of the IPC, on the ground that he had committed forgery in the office copies of the receipts issued for recovery of revenue and education cess and shown lesser receipts of amount to the tune of Rs. 3,151.05 paise in respect of which he committed breach of trust. While framing the charges, the learned Judicial Magistrate First Class, Valsad felt that no offence was committed under Sec.466 of the IPC, on the basis of the papers which were produced. He however, framed charge against the petitioner for the offence under Section 409 of the IPC. The petitioner, by statement Ex.9, admitted the commission of the offence by him. The learned Magistrage ascertained that it was a voluntary admission of guilt. According to the petitioner, he had not received salary for nearly an year and as his wife fell sick, he had taken the amount intending to replenish it in future. The learned Magistrate was very much moved by such an explanation given by the petitioner while admitting the guilt under Section 409, for which the law provides punishment of imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and fine. The learned Magistrate was so much moved by such a mundane explanation given by the petitioner that he imposed the sentence of only imprisonment till the rising of the Court and a fine of Rs. 45/-. That order was made on 2.2.1984. Having thus, tested extreme lenience of the Court in the prosecution, the petitioner has preferred this petition against the order of dismissal from service, which was based on his conviction by the Criminal Court for the offence under Section 409 of the IPC.

Under Rule 10(1)(i) of the Gujarat Panchayats Services Discipline and Appeal Rules, 1964, the procedure of enquiry is not required to be followed where a penalty is to be imposed on a Panchayat servant on the ground of conduct which has led to his conviction on a criminal charge. The conduct which led to conviction on criminal charge which amounts to misconduct would entail punishment upto dismissal. While imposing punishment in a Departmental action based on conviction on a criminal charge of the delinquent, undoubtedly the nature and

magnitude of the offence is to be kept in mind for determining the quantum of punishment, as held in H.P.Thakore Vs. State of Gujarat, reported in 20 G.L.R p. 109, which was relied upon by the petitioner before the Tribunal also.

3. It was contended by the learned Counsel appearing for the petitioner that the punishment of dismissal which is imposed on the petitioner is wholly disproportionate to the offence committed by him, which may amount to misconduct. It was also contended that the Tribunal was a substitute for the Government while hearing the appeal and it had ample appellate power to reduce the sentence on an independent assessment of the matter. It was submitted that in any event, this Court can remand the matter for imposition of a lesser punishment.

4. The petitioner who was in his capacity as Talati-cum-Mantri, supposed to safe-guard the recovery of revenue and education cess, has committed a criminal breach of trust in respect of the amounts which were entrusted to him. The petitioner had admitted the guilt. Most likely it was a strategic admission of guilt to earn a lenient sentence, as is clear from the order of the learned Magistrate. The offence nonetheless is a serious one and a person who had indulged in such a criminal breach of trust while working as a Talati, can hardly be trusted in his future dealings, if he is allowed to continue as a Talati-cum-Mantri. This precisely has weighed with the authorities below. The Tribunal has in the impugned order, in terms, stated that the criteria No.2 indicated in H.P.Thakore's case by the High Court as regards the desirability or otherwise of retaining the Government servant in service in the context of the charges found proved against him, was the criteria which had weighed with it. It was held by the Tribunal that looking to the facts of the case, it was in agreement with the Disciplinary Authority as well as the Appellate Authority that it was not desirable to retain a person of the petitioner's quality in public service, as it would not be in the interest of public. It is therefore clear that the Tribunal has independently assessed the quantum of punishment in context of the relevant factors and rightly found that the order of the petitioner's dismissal was justified. The Tribunal has acted in lawful exercise of its powers and there is absolutely no warrant for interference with the impugned orders. The petition is therefore, dismissed. Rule is discharged with no order as to costs.

* /Mohandas